Supreme Court, U. S.
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No. 77-978

In the
# Supreme Court of the United States
OCTOBER, 1977

WESTERN CHAIN COMPANY, a corporation,
*Petitioner,*

*vs.*

NELL BROWNLEE, et al.,
*Respondents.*

## BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT

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WESTERN CHAIN COMPANY, a corporation,
*Petitioner,*

*vs.*

NELL BROWNLEE, et al.,
*Respondents.*

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**BRIEF OPPOSING PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF ILLINOIS FIRST JUDICIAL DISTRICT**

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### QUESTIONS PRESENTED FOR REVIEW

1. Whether the Petitioner, after appearing, litigating, and losing the jurisdictional issues in the Mississippi State Courts, may collaterally attack the Mississippi Judgment in an Illinois action to register the Mississippi Foreign Judgment.

2. Was Petitioner denied due process of law or did Petitioner simply neglect to respond to a lawful and constitutionally proper process.

## STATEMENT OF THE CASE

Respondents believe the following statement of the case is necessary for the Court's benefit in deciding the questions raised herein.

Respondents are the wife and children of Billy Brown lee who was a mechanic employed by Berry Motor Com pany of Magee, Mississippi. On May 5, 1971 a new chain manufactured by Petitioner, was being used by Billy Brownlee to raise a wrecked automobile. After the car had been raised, Billy Brownlee went underneath the car to see if the vehicle could be moved without damage to the transmission. While he was under the car, a link in the newly purchased chain separated causing the car to fall and crush Billy Brownlee to death.

A lawsuit sounding in strict liability in tort for the wrongful death of Billy Brownlee was filed by the Respondents in the Circuit Court of Simpson County, Mississippi against the Petitioner charging that it had placed a new mental chain on the market in a defective condition.

Process was issued in accordance with Section 1457, Mississippi Code of 1942 as amended in 1964. The process was properly and duly served on January 11, 1973 on the Secretary of State of the State of Mississippi who, on the same date, mailed a copy of the summons by registered mail to the Petitioner at its proper address. (Appendix A) Along with the summons, the Secretary of State sent a letter advising the Petitioner of the date of service and further advising that a suit was pending against it in the Circuit Court of Simpson County, Mississippi and that the Petitioner should give the matter the attention it required. (Appendix B) This registered letter and summons was received by the Petitioner and the registered receipt was signed by Mr. John



R. Miller, a long time employee of the corporation. The registered letter and summons was turned over to the bookkeeper who was also the Secretary of the corporation. The letter and summons were stamped "in" by her as received by the Petitioner on January 15, 1973 and placed on the desk of Arthur W. Hill, the long time President of the corporation. Mr. Hill read the letter from the Secretary of State and the summons and returned them both to his desk. The summons was returnable to the March, 1973 term of Court.

The March, 1973 term of Simpson County Circuit Court convened on March 12, 1973. No answer or other pleadings were filed on behalf of the Petitioner and on March 20, 1973, sixty-four (64) days after the receipt by the President of the corporation of the summons, a hearing was held by the Circuit Court. Evidence presented in open Court established the sale of the subject chain by Petitioner to Henderson & Baird Hardware Company, a Mississippi wholesale company, the resale to a local hardware store and the final sale to a co-employee of Billy Brownlee. The testimony established that the chain failed when put into use in Simpson County, Mississippi and the testimony of knowledgeable witnesses established that the link separated as a result of an incomplete and faulty weld in the link. The Court, after finding that the Petitioner committed a tort in the State of Mississippi, was properly and legally served and that it had jurisdiction over the parties and the subject matter, entered judgment in favor of Respondents.

On August 6, 1973, Petitioner elected to appear specially and file with the Circuit Court of Simpson County a motion to set aside the default judgment contending, among other things, that the corporation had

no notice of the lawsuit and that judgment was void on account of lack of jurisdiction over Petitioner and on account of deprivation of due process of law in violation of the Fourteenth Amendment of the United States Constitution and Section 14 of the Mississippi Constitution of 1890. The motion was quite lengthy and briefs were filed by both parties regarding these issues and a full evidentiary hearing was held on September 14, 1973. On October 8, 1973, the Circuit Court Judge, George B. Grubbs, in a three page written opinion denied the motion to vacate the judgment. (Appendix C)

Petitioner appealed that ruling to the Mississippi Supreme Court. After thorough briefing and oral argument, the Mississippi Supreme Court, on July 21, 1975, affirmed the lower Court's ruling. Rehearing was denied on September 9, 1975 and Petitioner sought no further review.

The Illinois registration of the Mississippi judgment was allowed and upheld by the Illinois Appellate Court. The Petition for Leave to Appeal to the Illinois Supreme Court was denied.



## REASONS FOR NOT GRANTING THE WRIT

### I.

### THE ISSUE OF JURISDICTION WAS LITIGATED AND DECIDED IN FAVOR OF THE RESPONDENTS IN THE MISSISSIPPI STATE COURTS AND PETITIONER IS BARRED BY PRINCIPLES OF RES JUDICATA AND SHOULD NOT BE ALLOWED TO COLLATERALLY ATTACK IN ILLINOIS THE FINDINGS OF THE MISSISSIPPI COURTS BECAUSE FULL FAITH AND CREDIT MUST BE EXTENDED.

Petitioner requests that this case be considered in light of *Griffin* v. *Griffin,* 327 U.S. 220 (1945). Respondents respectfully suggest that although they agree with the holding in *Griffin,* even a cursory reading of that case indicates that its fact situation has absolutely no bearing on the issues in the case at bar.

*Griffin* involved a Respondent who acquired a 1938 New York alimony judgment that was entered against Petitioner without giving him *notice of any kind* and without *any form* of service of process calculated to give him notice of the proceedings. In the suit to domesticate the 1938 New York order, Petitioner raised the defense that the judgment was entered without notice to him and, therefore, was null and void for want of due process. Accordingly, it is clear that full faith and credit should not have been granted to the invalid 1938 New York judgment since it was obtained without any notice. As will be seen, infra, the facts in the present case differ significantly with *Griffin.*

The United States Constitution requires that "Full Faith and Credit shall be given in each State to the Public Acts, Records and Judicial Proceedings of every other State." *United States Constitution, Article IV, Section 1.* Petitioner contends that Illinois should not have given full faith and credit to a judgment obtained in the Circuit Court of Simpson County, Mississippi and affirmed by the Supreme Court of Mississippi because jurisdiction over the defendant in the Mississippi lawsuit was obtained through the use of faulty process. The matter presently before this Court and its relationship with the Full Faith and Credit Clause of the United States Constitution has been the subject of many Court decisions in the past. The true issue in this case is one which was decided against the Petitioner by the United States Supreme Court 47 years ago.

In *Baldwin* v. *Iowa State Traveling Salesmen's Association,* 283 U.S. 522 (1931) the Supreme Court upheld the judgment of an Iowa District Court in favor of a plaintiff in an action on a judgment brought in the Federal District Court in Missouri. In the Missouri proceedings the defendant had filed a special appearance attacking Missouri jurisdiction on the grounds that the defendant was an Iowa corporation not "present" in Missouri and therefore could not be lawfully served with process in the Missouri lawsuit. The Missouri court ruled against the defendant on this jurisdictional issue and thereafter judgment was taken against the defendant. In the Iowa lawsuit brought to domesticate the Missouri judgment, the defendant insisted that to deprive it of the defense of lack of jurisdiction, which it had made already in the Missouri District Court, would be to deny the due process guaranteed by the Fourteenth Amendment.



The Supreme Court, in ruling that there is involved in that doctrine no right to litigate the same questions twice, stated at page 525:

> "The special appearance gives point to the fact that the respondent entered the Missouri court *for the very purpose of litigating the question of jurisdiction over its person. It had the election not to appear at all.* If in the absence of appearance the court had proceeded to judgment and the present suit had been brought thereon, respondent could have raised and tried out the issue in the present action because it never had its day in court with respect to jurisdiction. (Citing cases.) (Emphasis supplied)
>
> "Public policy dictates that there be an end of litigation; that those who have contested an issue shall be bound by the result of the contest and the matters once tried shall be considered forever settled as between the parties. We see no reason why this doctrine should not apply in every case where one voluntarily appears, presents his case and is fully heard and why he should not, in the absence of fraud, be thereafter concluded by the judgment of the tribunal to which he has submitted his cause."

The Supreme Court reiterated its position in the case of *Stoll* v. *Gottlieb,* 395 U.S. 163 (1938) by stating at page 172 that:

> "We see no reason why a court in the absence of an allegation of fraud in obtaining the judgment, should examine again the question of whether the court making the earlier determination on an actual contest over jurisdiction between the parties did have jurisdiction of the subject matter of the litigation . . . Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After

> a party has had its day in court, with opportunity to present its evidence and its view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined."

Again, in the case of *Treinies* v. *Sunshine Mining Company,* 308 U.S. 66 (1939) the court stated at page 78 that "one trial of an issue is enough. The principles of *res judicata* apply to questions of jurisdiction as well as to other issues."

The *Baldwin* decision has never been overruled by the United States Supreme Court and, in fact, has consistently been followed down to the present day. See, for example, *Durfee* v. *Duke,* 375 U.S. 106 (1963), *Scherrer* v. *Scherrer,* 334 U.S. 343 (1948). In Durfee, page 111, the Court stated:

> ". . . a judgment is entitled to Full Faith and Credit —even as to questions of jurisdiction—when the second court's inquiry discloses that those questions have been fully and fairly litigated and finally decided in the Court which rendered the original judgment."

In the case of *Cascade Chemical Coatings, Inc.* v. *Wellco Chemical Products Co.,* 15 Ill. App. 3d 1056, 305 N.E. 2d 595, cert. denied in 419 U.S. 841, defendant appealed from a summary judgment in favor of plaintiff in an action to enforce an Oregon judgment. The issue presented for review was whether the filing of a special appearance in the Oregon court prevented collateral attack on the jurisdictional basis of the judgment entered therein where it appeared that the jurisdictional issue was decided by the foreign court. The Court in affirming the lower Court's ruling stated at page 1057 that:



> "When a court of one state is requested to give effect to the judgment of a sister state it may constitutionally inquire into the foreign court's jurisdiction to review the judgment *but when that inquiry discloses that the issue of jurisdiction has been litigated and decided in the court which rendered the judgment, the matter is res judicata and the court wherein enforcement is sought must extend full faith and credit to the judgment.*" (Citing cases.) (Emphasis supplied.)

The decision in *Cascade* also noted that the proper remedy for a defendant who loses the jurisdictional issue in the forum state is to appeal that adverse ruling rather than waiting to attack the jurisdiction again when suit is brought on the judgment in a sister state. Here, Western Chain did appeal to the Mississippi Supreme Court which examined Judge Grubbs' denial of the motion to vacate. *Western Chain Company* v. *Brownlee,* 317 So. 2d 418 (1975). After losing in the Mississippi Supreme Court, however, Petitioner elected not to seek further review of the constitutional issue in the United States Supreme Court. The failure to seek direct Supreme Court review on the jurisdictional issue was one of the facts discussed by the United States Supreme Court in its decision in *Durfee* v. *Duke,* 375 U.S. at page 108 (1963).

## II.

## THE PROCESS SERVED ON PETITIONER COMPLIED WITH THE FOURTEENTH AMENDMENT'S REQUIREMENTS OF PROCEDURAL DUE PROCESS.

The instant Petition is based upon the inaccurate premise that Petitioner was denied due process of law because it did not have prior notice of the nature or amount of Respondents' claim.

On page 3 of its Petition, Petitioner states that it made no appearance in the initial Mississippi proceeding because:

1. The summons failed to indicate the economic consequence of non-appearance.
2. Petitioner was unaware that there was any claim involving Respondents.
3. Petitioner was unaware that its products were sold in Mississippi.
4. Petitioner's Chief Operating Officer was in poor health.

Even if the above contentions were true and accurate, they are certainly not grounds to ignore a lawfully served and constitutionally proper Court Summons.

Jurisdiction over Petitioner was complete when its agent signed for the registered letter and the copy of the receipt was placed in the file in the Circuit Court of Simpson County, Mississippi. (Appendix D) The failure of Petitioner to respond to the service of process should not be the basis of the claim of "unfair play" in the constitutional sense of its application to due process.

Petitioner infers that the Mississippi procedure confering personal jurisdiction over a defendant based on the service of a summons, without any attached copy of the complaint, is insufficient notice under applicable standards of procedural due process. The Court Summons received by Petitioner states in a clear and concise manner the following:

1. *Western Chain Company is the defendant in a lawsuit in which Mrs. Nell Brownlee, Donna Jo Brownlee, a minor, Billy Brownlee, Jr., a minor, Karen Jean Brownlee, a minor, and Robert Winfield Brownlee, a minor, are plaintiffs.* (Emphasis supplied)
2. That Western Chain Company is to appear before the judge of the Circuit Court of Simpson County in the courthouse in the Town of Mendenhall, State of Mississippi *on the second Monday of March, 1973, to answer the declaration of the plaintiffs.* (Emphasis supplied)
3. That said declaration was filed when the Summons was issued *and that said declaration is on file in the Clerk's office of said court.* (Emphasis supplied)
4. By Section 1519, Mississippi Code of 1942 as amended, that Western Chain Company is required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, whichever would cause the pleading to be filed earlier.
5. That the amount of money actually demanded in this lawsuit is *the sum stated in the said declaration plus lawful interest and costs.* (Emphasis supplied)
6. *That judgment will be demanded at return term.* (Emphasis supplied)



The letter from the Mississippi Secretary of State that accompanied the Summons was addressed to Western Chain Company, 1807 Belmont Avenue, Chicago, Illinois. This letter stated in full that:

> "We hand you herewith copy of process served on HEBER LADNER, Secretary of State, your agent and attorney for service of process in Mississippi, today issued by the Clerk of the Circuit Court of Simpson County, Mississippi, *to which you are defendant* and Mrs. Nell Brownlee, et al., are *plaintiffs. You will understand from a perusal of said process, that a suit is now pending in the above-mentioned*

> *court and you will give such matter the attention it requires.* Very truly yours, /s/ HEBER LADNER, Secretary of the State of Mississippi." (Emphasis supplied)

The Summons and the letter from the Secretary of State are worded in very simple language, direct and to the point. It is difficult to imagine what more would be necessary in a process in order to comply with the minimum constitutional requirements for notice for a lawsuit set forth in *Mullane* v. *Central Hanover Trust Co.,* 339 U.S. 306, 314 (1949)—notice which is:

> . . . reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections . . .

The sole object of process is to notify a defendant of pending litigation so as to secure his appearance. There is no necessity to attach plaintiff's pleadings or its copy to the process unless required by statute. There was and is no requirement by the Mississippi Legislature that a copy of the declaration be attached to the Summons.

The Summons received by Petitioner was procedurally, legally and constitutionally complete in and of itself. Had Mr. Hill "given the matter the attention it required", he could have acquired answers to any questions he may have had with respect to the pending lawsuit. In fact, he had sixty-four days in which to do so. The service of process on defendant was at the very, very minimum in compliance with due process in that the Summons gave adequate and reasonable notice of the pendency of a lawsuit in which Western Chain Company was the



defendant in the State Courts of Mississippi. In addition, Petitioner was certainly afforded a fair opportunity to be heard before the issue was decided. The summons and letter combined provided Petitioner with sufficient information so that it could have made an enlightened and informed judgment as to whether it should or should not appear. Petitioner chose not to appear. Simply stated, the Petitioner is asking this Court to grant its Petition because its highest official, who was also its major stockholder, ignored a lawfully served Summons.

## CONCLUSION.

It is quite evident that Petitioner was extended procedural due process which it chose to ignore and that Petitioner alleged in Illinois the identical issues that had been ruled on and adjudicated in the Mississippi Courts. Petitioner had a *full* and *complete* hearing on *all* issues in the Mississippi Courts. Petitioner should not be allowed to reargue, retry and collaterally attack these issues once again. This cause should not be reviewed by this Court. The matter is *res judicata.*

Respectfully submitted,

PHILIP H. CORBOY AND ASSOCIATES
33 North Dearborn Street
Chicago, Illinois 60602

*Attorneys for Mrs. Nell Brownlee, et al., Respondents.*

PHILIP H. CORBOY
THOMAS A. DEMETRIO
*Of Counsel.*

## APPENDIX A

C34

EXHIBIT "A"

COURT SUMMONS

No. 12,013

THE STATE OF MISSISSIPPI

TO THE SHERIFF OF HINDS COUNTY—GREETINGS:

WE COMMAND YOU HEREBY THAT YOU SUMMONS WESTERN CHAIN COMPANY, 1807 Belmont Avenue, Chicago, Illinois, service of process to be had on Hon. Heber Ladner, Secretary of State, Jackson Mississippi, who is resident agent under Section 1437, Mississippi Code of 1942, as amended.

Defendant

if to be found in your County, so that they be before the Judge of the Circuit Court of said Simpson County, at a term thereof to be holden for the County aforesaid, at the Courthouse, thereof, in the Town of Mendenhall, Mississippi, on the Second Monday of March, A.D. 1973 to answer the declaration of

MRS. NELL BROWNLEE, DONNA JOE BROWNLEE, A MINOR, BILLY BROWNLEE, JR., A MINOR, KAREN JEAN BROWNLEE, A MINOR, ROBERT WINFIELD BROWNLEE, A MINOR, SAID MINORS APPEARING BY MRS. NELL BROWNLEE, MOTHER AND NEXT FRIEND.

Plaintiff

against the said defendant now on file in the Clerk's office of said Court. And have then and there this summons.

(By Section 1519, Mississippi Code of 1942, as amended, you are required to plead on or before the first day of the term of court to which the process is returnable or within thirty days after service of process, which ever would cause the pleading to be filed earlier.)

The amount actually demanded in this suit is the sum stated in the said declaration and lawful interest and costs.

Judgment will be demanded at return term.
Issued the 9th day of January, 1973.
Declaration filed when summons issued.

ATTEST.
(SEAL)

..... P.Q.
Garland Reed, Circuit Clerk
By Garland Reed, D.C.



## APPENDIX B

C36 EXHIBIT "B"

(Letterhead of)
MISSISSIPPI
DEPARTMENT OF SECRETARY OF STATE
Heber Ladner, Secretary of State
Jackson, Mississippi

Registered Mail
Deliver To Addressee Only
Return Receipt Requested

No. 218-046
January 11, 1973
9:00 A.M.
Cause No. 12,013

Western Chain Company
1807 Belmont Avenue
Chicago, Illinois

We hand you herewith copy of process, served on HEBER LADNER, Secretary of State, your agent and attorney for service of process in Mississippi, today issued by the Clerk of the Circuit Court of Simpson County Mississippi, to which you are defendant and Mrs. Nell Brownlee, et al are Plaintiffs

You will understand, from a perusal of said process, that a suit is now pending in the above mentioned court and you will give such matter the attention it requires.
cc: Hon. Garland Reed

Circuit Clerk, Simpson Co.
Mendenhall, Mississippi
Filed Jan 12 1973

/s/ Heber Ladner
Secretary of State of Mississippi.
Very truly yours,

## APPENDIX C

C7 EXHIBIT "C"

IN THE CIRCUIT COURT OF SIMPSON COUNTY, MISSISSIPPI

No. 12,013

MRS. NELL BROWNLEE, ET AL

Plaintiffs

vs.

WESTERN CHAIN COMPANY

Defendant

OPINION ON MOTION TO SET ASIDE AND VACATE INTERLOCUTORY JUDGMENT AND FINAL JUDGMENT RENDERED UPON DEFAULT AND TO GRANT THE DEFENDANT REASONABLE ADDITIONAL TIME IN WHICH TO PLEAD, ANSWER, OR DEMUR

This day this cause came on for ruling of the Court upon a Motion to Set Aside and Vacate Judgment heretofore entered in this cause after same had been filed, along with amendments thereto and affidavits and the Court proceeded on the 14th day of September, 1973, to hear sworn, oral and documentary evidence in support of said Motion, and having taken under advisement the Court's ruling and having requested briefs and said briefs on behalf of the parties having been filed and the Court, after having examined the file in its entirety and particularly the matter pertaining to service of process in the manner and for the period of time required by law in such cases and all of the other evidence, is of the opinion and so finds that the Defendant has been



afforded a fair and impartial hearing upon its Motion and, in view of the briefs filed and cases cited for and on behalf of the respective parties, the Court is of the opinion that there has been no fraud perpetrated upon the Defendant and that process in this case was served in the manner and for the period of time required

C8 by law; that Arthur W. Hill, President of the Defendant Corporation, actually received this process, studied its contents and placed thereon a question mark. The Court further finds that although Mr. Hill had lost a loved one, it was shown in the testimony adduced upon the hearing of this Motion that he has been President of the Defendant Company since its inception and was President of the original Corporation; that he appears to be unusually mentally alert and responsive to and understanding of logical and business terms. He mentions in his testimony Dunn and Bradstreet, garnishments, mergers, and so forth, all of which leads this Court to believe that he well knew from the face of the said process, or certainly should have known, that this was a legal proceeding in Mississippi that required attention. Further, this gentleman is still the President of this Company and the Court presumes he is still tending to and looking after such matters. This witness further states that his Corporation has employed various and sundry attorneys to handle various and sundry legal matters.

The Court further finds that, as may be verified from a transcript of the original proceedings, that no fraud exists nor is there any basis for any fraud to be alleged, since the proceeding of which the Defendant complains was held and judgment rendered several days prior to the concluding of the March 1973 Term of this Court and the judgment rendered thereon was rendered only

after attestation by the Clerk of this Court that process was had in the manner and for the period of time required by law and it now appears that this process was received by the only one who had any authority, duty
C9 or obligation to act for and on behalf of Western Chain Company—its President, Arthur W. Hill; that he did read and keep, to the date of the hearing, the process from the Secretary of State.

It is, therefore, the considered opinion of this Court that the Motion to Set Aside and Vacate Interlocutory Judgment and Final Judgment Rendered upon Default and to Grant the Defendant Reasonable Additional Time in Which to Plead, Answer, or Demur is not well taken and the same should be and is hereby overruled.

The Court directs that the above and foregoing opinion this day be transmitted by the Court Reporter to all attorneys of record and directs that an appropriate Order be prepared by the attorneys for the Plaintiff to be submitted to the Court and entered as of this day reflecting the Court's ruling.

SO ORDERED this 8th day of October, 1973.

.....

Circuit Judge



## APPENDIX D

C37 EXHIBIT "D"

RECEIPT

Jan 15 1973

(Letterhead of)
STATE OF MISSISSIPPI
SECRETARY OF STATE
HEBER LADNER
Post Office Box 136
Jackson, Mississippi 39205

January 18, 1973

Corporation Division
W. A. Thornton, Deputy
Ray Bailey, Deputy

Securities Division
Ben Hawkins, Deputy
Telephone 354-6548

Commercial Code Division

Boards and Commissions
W. W. Reagan, Deputy
Telephone 354-6545

Hon. Garland Reed
Circuit Clerk, Simpson County
Mendenhall, Mississippi

| | |
|---|---|
| January 11, 1973 | Date |
| 218-046 | Registry No. |
| 12,013 | Cause No. |
| Mrs. Nell Brownlee, et Al | Plaintiff |
| | vs |
| Western Chain Company | Defendant |

We are enclosing herewith return receipt signed by
Western Chain Co. John R. Miller

showing that a copy of the process together with notice of service on the Secretary of State has been received.

Please handle this receipt in accordance with the provisions of the statutes of the State of Mississippi.

Very truly yours,

/s/ Heber Ladner
Heber Ladner
Secretary of State

WWR:sac
Filed Jan 19 1973